

Before The
Federal Communications Commission
Washington, D.C. 20554

In The Matter Of)	
)	
Implementation of the Commercial Spectrum)	WT Docket No. 05-211
Enhancement Act and Modernization of the)	
Commission's Competitive Bidding Rules and)	
Procedures)	

COMMENTS OF WIREFREE PARTNERS III, LLC

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Summary

Wirefree III encourages the Commission to move quickly to eliminate the cloud of regulatory uncertainty and risk that the Further Notice has injected into the AWS auction for small bidders. The Commission should carefully evaluate whether there is sufficient time to modify the DE rules in time for the AWS auction in a thoughtful and reasonable manner. Any rules adopted should be clear, specific and narrowly tailored to permit small businesses to enter into commercial transactions and relationships essential to their success in the competitive wireless marketplace and to accessing the capital markets and should not be designed to fit only one business model or prospective bidder.

Specifically, Wirefree III suggests the following path as a means to modify the rules and still provide small businesses with the regulatory certainty and free market flexibility to structure their businesses:

- Permit designated entities (“DEs”) to lease no more than 50% of their licensed spectrum in the first five years of licensing as a means to raise capital and fund the DE’s own network build;
- Require the qualifying owners and management team of a DE to hold at least a 25% equity interest and restrict all in region carriers, with geographic overlap (regardless of size), from acquiring an interest of more than 50% in a DE in the first five years of licensing;
- Apply the Commission’s current unjust enrichment rules following the rules applied to PCS without restraining new investment (especially in additional spectrum) or growth of small businesses; and
- Clarify that not every single member of a DE’s board of directors is deemed to have a controlling interest to allow DEs to recruit experienced leadership to their boards and provide their investors with board participation.

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Wirefree Partners III, LLC (Wirefree III) hereby respectfully submits its comments in response to the Further Notice of Proposed Rulemaking released by the Commission on February 3, 2006 in the above-referenced proceeding (the "Further Notice"). In the Further Notice, the FCC proposes to change its long established rules for auction bidders to qualify as small businesses and to apply the new rules to the Advanced Wireless Services ("AWS") auction scheduled to start in four months.

Wirefree III urges the Commission to exercise extreme caution in adopting any rule changes this close to the auction. Furthermore, any rules adopted by the FCC should be narrowly tailored to preserve opportunities for participation by entrepreneurs and small businesses in AWS and future spectrum auctions and not permit only a select few small businesses to qualify in the auction. The regulatory uncertainty created by the Further Notice and the possible expanse of the proposed restrictions on small business create a perilous environment for small businesses and is contrary to the role that government can take to foster small business growth. As President Bush noted in his recent speech titled The Importance of Small Business in Economic Growth: "The role of government is to create an environment in which people are willing to risk capital, to take risk; an environment in which people are willing

to work to realize their dreams.”¹ The Commission should strive to meet this challenge in adopting rules changes with sufficient clarity and flexibility to provide small businesses viable opportunities to participate in the AWS and future auctions.

I. Summary and Recommendations

Wirefree III encourages the Commission to act with deliberate speed and to adopt rules that are equitable, specific and provide realistic opportunities for small businesses to develop and grow wireless businesses. Specifically, Wirefree III suggests the following path as a means to modify the rules and still provide small businesses with the regulatory certainty and free market flexibility to structure their businesses:

- Permit designated entities (“DEs”) to lease no more than 50% of their licensed spectrum in the first five years of licensing as a means to raise capital and fund the DE’s own initial network build-out;
- Require the qualifying owners and management team of a DE to hold at least a 25% equity interest and restrict all in region carriers, with geographic overlap (regardless of size), from acquiring an interest of more than 50% in a DE in the first five years of licensing;
- Apply the Commission’s current unjust enrichment rules following the rules applied to PCS without restraining new investment (especially in additional spectrum) or growth of small businesses; and
- Clarify that not every single member of a DE’s board of directors is deemed to have a controlling interest to allow DEs to recruit experienced leadership to their boards and provide their investors with board participation.

Alternatively, Wirefree III recommends, as the preferred course of action, that the Commission not rush to change the DE rules for the AWS auction but take the time to carefully evaluate and study the need for reform of the rules and lessons learned from prior auctions. This studied approach is most likely to set a course for continued and improved opportunities for small businesses in future spectrum auctions.

¹ See Speech by President George W. Bush at JK Moving and Storage, Sterling, Virginia, January 19, 2006 (available at www.whitehouse.gov/news/releases/2006/01/20060119-2.html#).

II. Wirefree Partners III Overview

Wirefree III was founded and is managed by entrepreneurs with over 25 years of experience in the wireless telecommunications industry and a track record of success in building and operating wireless networks from paging to cellular to PCS. In the late 1990s, the controlling principals of Wirefree III became active bidders in the FCC's PCS auctions seeking to build on their success in owning and operating competitive paging, cellular and fiber optic companies. In the original C block auction, the founders of Wirefree III participated as Airlink, LLC, an entity that placed a \$20 Million deposit at the FCC, hoping to acquire licenses to build a competitive PCS network in the Southeastern United States. Airlink subsequently withdrew from the auction in Round 45 based on its belief that the auction prices would not support a sound business plan. Wirefree III's principals participated in the subsequent F block auction and won licenses for five BTAs and participated in the subsequent C block re-auctions – each time honoring in full their companies' payment obligations to the FCC. Wirefree III's management team also founded AirGate PCS, a NASDAQ company that, using its own equity and debt, built and managed a competitive Sprint PCS network in certain markets in the Southeast covering more than seven million people. After leaving Airgate PCS in 2000 and 2001, the principals continued to seek new entrepreneurial opportunities in the wireless industry. In Auction 58, Wirefree III raised its own equity from leading venture capitalists and completed an independent debt offering to fund its purchase of 16 PCS licenses for total net winning bids of \$150 Million.

III. Any Rule Changes Must be Carefully Tailored and Sufficiently Clear to Address Control Issues but also Permit Small Business to Participate in the Auction and Compete in the Wireless Market

The rule changes suggested by the Commission in the Further Notice are so broad that they would eliminate **any** realistic opportunity for participation and success by small businesses in the AWS auction. The proposed rule changes move away from the *de jure* and *de facto* control standard consistently used by the FCC in spectrum auctions and shift to a standard of disqualification by mere association or contract. This approach ignores the importance of varied forms of contractual relationships that small businesses need, and seek, to fully fund and develop their own businesses.

Spectrum auctions are expensive to both participate in and to succeed in as a winning bidder with immediate payment obligations. With the elimination of installment payment financing, bidders – including very small business bidders – must raise millions of dollars in advance of the auction. For example, the upfront payment in the AWS auction required to establish eligibility to bid for all the licenses in any **one** of the top six REAGs is over \$15 Million.² If the Auction produces net winning bids of \$15 Billion, the average price per MHz/Pop will be \$0.58. Using this average, the price to purchase the Cellular Market Area AWS license for Atlanta would be over \$43 Million. The price for the Jacksonville, Florida CMA, a smaller market, at this average price per MHz/Pop would be slightly north of \$13 Million. The full payment is likely to be due within 20 days of the auction's close. These prices and even the minimum bids will require small businesses to raise significant capital in the next

² The upfront payments for the six regional economic areas range from \$15.6M to \$50M. The top six regional economic areas by population and upfront payment are the Northeast, Southeast, Great Lakes, Mississippi Valley, Central and Western Regional Economic Areas. See Auction of Advance Wireless Services Licenses Scheduled for June 29, 2006, Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures, *Public Notice*, DA 06-238 (rel. Jan. 31, 2006) ("AWS Procedures Public Notice").

four months in a context while the rules are unknown. This will be an impossibility for most true start-up companies.

If the FCC is to create a regulatory environment in which entrepreneurs can convince their investors to risk capital and believe in the future of AWS, the FCC must reject the call to artificially and rigidly restrain small businesses from developing commercial relationships with others in the communications industry. From routine contracts like vendor contracts to purchase and finance network equipment to spectrum manager leases that lease a limited amount of spectrum on commercial terms but provide immediate revenue, a single contract can provide a foundation to open funding doors to much needed capital. Significantly, most of these agreements, such as spectrum leases, do not carry with them any attributes of control or ownership. Unlike equity investments, most contractual relationships between communications companies are market-based transactions that provide small businesses with an independent basis on which to raise their own capital and build their own businesses and service offerings.

If the Commission adopts Council Tree's suggestion to disqualify eligible entrepreneurs and small businesses based on a material relationship with a communications carrier or company with significant interests in communications services, it should narrowly and specifically define what constitutes a material relationship. Small businesses need the flexibility to enter into reasonable commercial agreements with other participants in the communications industry. To be a bona fide small business and qualify for the bidding discount to merely bid on spectrum, a business owner should not have to agree to be the Lone Ranger of the wireless world. Yet this will be precisely the result if "material relationships" are left open to interpretation or defined, as Council Tree suggests, to include a wide range of commercial agreements.

The isolationist view that small businesses can succeed without commercial relationships with other industry participants ignores the economic realities of funding and running a successful wireless company in today's market. Competition is alive and well in the wireless industry.³ Stiff competition in the wireless industry requires that start up companies and smaller wireless carriers offer compelling and competitively priced services that will attract investment capital as well as subscribers. In this competitive environment, spectrum and a dream will not attract investors or the substantial capital required to purchase spectrum or build a network.

IV. The Commission's Spectrum Leasing Rules Strike the Right Balance in Permitting Contractual Relationships that Do Not Include Any Elements of Control

The Commission should continue to allow spectrum leasing by DEs pursuant to the guidance provided in the Secondary Markets Proceeding.⁴ The Commission thoughtfully struck the right balance in allowing DEs to lease a portion of, but not their entire, spectrum to third party lessees in the Secondary Markets Proceeding. The guidance provided by the Commission in the Secondary Markets Order contains adequate protections to ensure that the leasing relationship remains one of contract and not control or affiliation while allowing a DE to generate a revenue base on which to build its own, independent network operations. Specifically, while acknowledging that each applicant must perform its own analysis under the

³ See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Tenth Report*, 10 FCC Rcd 15908, 15913 (2005) ("although the mobile telephone market has become more concentrated as a result of the merger of two nationwide carriers, none of the remaining competitors has a dominant share of the market, and the market continues to behave and perform in a competitive manner").

⁴ Promoting Efficient Use of Spectrum Through Elimination of Barriers To the Development of Secondary Markets, *Second Report and Order, Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 19 FCC Rcd 17503, 17541-17542 (2004) ("*Secondary Markets Order*").

affiliation rules, the Commission provided the following helpful guidance in the Secondary Markets Order:

- Designated entities can only enter into **spectrum manager leases** for the first five years of licensing (no *de facto* transfer leasing unless the unjust enrichment penalty is repaid);
- A designated entity who elects to lease a **portion of its spectrum** must have a primary business other than spectrum leasing and not lease all its spectrum for the first five years;
- Lessees should **not have the right to appoint any officers or directors** in the designated entity/Lessor; and
- The designated entity Lessor and Lessee **can not enter into a lease that requires the Lessor and Lessee to combine their efforts, property, skill or knowledge.**

Wirefree III was able to fund its net winning bids for 16 PCS licenses in Auction 58, and its initial build-out budget, by leasing only 50% of its spectrum to subsidiaries of Sprint Nextel. The lease is on commercially reasonable terms and does not provide Sprint Nextel with any management or ownership rights in Wirefree III. The spectrum was paid for with Wirefree III's own debt and equity capital. With the funding raised, Wirefree III can focus now on deploying its own network in each of the 16 licensed markets. Without the ability to supplement its projected business plan with leasing revenues, Wirefree III would not have been able to raise sufficient capital to participate in Auction 58 or fund its preliminary network build-out and ongoing operations.

The leasing rules as set forth in the Secondary Market Orders should apply for the first five years of the license term. This provides DEs sufficient time to deploy and operate their own facilities-based network. At the same time, in the early years of network deployment, DEs can use the leasing revenue to fund their debt service for the cost of acquiring the spectrum and to fund network operations. Spectrum Manager Leasing also insures that the DE does not cede

control over the spectrum to a lessee. The rules on leasing should be relaxed after the first five years of licensing consistent with, and similar to, the five year holding period used for DEs in PCS.

V. Material Relationships Should Be Narrowly Defined to Apply to Significant Equity Ownership

a. The FCC Should Reinstate Minimum Equity Thresholds for DEs or Restrict In-Region Carrier Investment to 50%

Over the thirteen year history of spectrum auctions, the FCC has adopted different rules for determining small business qualification and affiliation. In the first C block auction for PCS, the FCC clearly defined the boundaries for equity ownership, requiring the small business/entrepreneur to own at least 25% of the equity as well as exercise *de facto* and *de jure* control over the licensee. In 2000, the FCC moved away from the minimum equity requirement to the controlling interest standard and eliminated any minimum requirement for equity ownership by the DE. This rule, allows for significant levels of ownership in DEs by entities other than the qualifying small business or entrepreneurial management team.

The FCC can address concerns regarding large equity interests by entities that do not meet the definition of entrepreneurial or small business by reinstating a minimum equity requirement of 25% for the qualifying DE or establishing a maximum equity interest that can be held by incumbent carriers. A maximum carrier equity interest of 50% would ensure that the carrier does not receive the majority of the economics of a DE's operation or the benefits of the bidding discount but may provide a DE with a strategic alliance that would enable it to attract additional non-carrier capital to run its own business.

b. There is No Rational Basis for Restricting In-Region Carrier Relationships Only With Large Carriers

The Commission should not adopt Council Tree's selective and arbitrary distinction between in-region carriers that are "large" and other in-region carriers that fail to meet Council Tree's definition of large. There is no rational basis for discriminating against carrier investment in a DE based solely on the size of the carrier. In Auction 58, large and small carriers made equity investments in DEs. If the Commission wants to restrain ownership in DEs by other wireless carriers it should apply this restraint uniformly.

Council Tree's proposal in essence suggests that the growth of wireless carriers and the deployment of national wireless networks is something to be disdained rather than honored as the efficient result of effective market competition. In the US wireless market, the large carriers operate in a highly competitive environment. The carriers have invested significantly in their networks to provide the nationwide coverage sought after by subscribers. In approving mergers of the "large" wireless companies cited by Council Tree, the FCC repeatedly has found the mergers to be in the public interest and that competition is sufficient to offset any concerns about consolidation in the wireless industry.⁵ Industry statistics support the FCC's conclusion. As CTIA reported in its Mid-Year Survey from June 2004 to June 2005, wireless subscribers grew by more than 25 million subscribers – the largest ever increase in a 12 month period. Significantly, the record setting subscriber growth was accompanied by growth in average

⁵ See, e.g., Wireless Telecommunications Bureau Grants Consent for the Assignment of Licenses to AT&T Wireless Services, Inc., Cingular Wireless LLC, Merriwether Communications LLC and Skagit Wireless, LLC, *Public Notice*, DA 03-1641 (rel. May 14, 2003); In the Matter of Applications of Nextel Communications, Inc. and Sprint Corporation for Consent to Transfer of Control of Licenses and Authorizations, File Nos. 002031766 et. al., WT Docket No. 05-63, *Memorandum Opinion and Order*, (rel. August 8, 2005).

customer usage of wireless services by 15.8% and a nominal 0.1% increase in subscribers' monthly wireless service bills.⁶

Large carriers often enter into commercial agreements with smaller companies that provide benefits to each company, perhaps through roaming agreements or trademark agreements, that do not rise to the level of control or render the small business a mere pawn. The Commission should recognize that wireless market realities provide opportunities for all size businesses and that small businesses will be at a significant disadvantage if they must reject all relationships with a large in-region carrier or company with significant interests in communications services.

VI. The Commission Should Clarify its Controlling Interest Rules Outside of Carrier Investments

The Commission should take this opportunity to clarify that its “controlling interest” rule does not require a DE to attribute the revenues and assets of every single member of its board of directors or the board member’s affiliates. Prior to Auction 58, the Commission modified its rules to eliminate the “control group” structure for the more flexible “controlling interest” standard in order to promote small business participation in auctions.⁷ When it adopted the more flexible “controlling interest” standard, the Commission said that the purpose was to “identify those controlling interests that actually have control through the application of the principles of

⁶ See www.ctia.org/research_statistics/index.cfm/AID/10030.

⁷ See e.g., the Commission declined to adopt a minimum equity requirement because “this policy would thus limit a small business’ ability to raise capital and undermine our intention of promoting small business participation in the highly competitive telecommunications marketplace.” See *Fifth Report and Order* at Para. 65. On November 7, 2005, Wirefree III filed a waiver request seeking to exclude from affiliation with Wirefree III, those members of its nine member board that are in a minority position and represent the venture capital investors and independent directors appointed following Wirefree III’s debt offering. To date, the Commission has not acted on the waiver request.

either *de jure* or *de facto* control.⁸ However, the Commission also adopted a rule that states that all officers and directors are deemed “controlling interests of the applicant.”⁹ The Commission’s designation of every officer and director as a controlling interest is in direct conflict with the intended flexibility of the controlling interest standard. It is well established precedent, both for DEs and in corporate law, that a single director and a minority of directors on a board do not exercise *de jure* control over a corporate entity. Indeed, the definition of *de jure* control used consistently by the Commission imposes a majority control and 51% voting rule.¹⁰

In addition, if the related businesses of every single member of an applicant’s board of managers is attributable, this rule will have a chilling effect on investment in DEs since applicants and DE licensees will be forced to screen their managers and directors for their attributable revenues and assets rather than their qualifications, investment or industry expertise. For example, the rule as applied prohibits a general partner in a venture capital firm who may be responsible for the investment decision in a DE from serving on a DE’s board – even if that manager is one of nine members of a board of managers. Similarly, the rule would prevent an investor with multiple outside investments and board positions in companies that exceed the revenue and asset caps for DEs from serving on the board in a minority capacity. The Commission should clarify that only the affiliation of officers and of board members representing or appointed by the qualifying controlling interest should be counted in determining a DE’s size.

⁸ *Id* at para. 66.

⁹ 47 C.F.R. §1.2110(c)(2)(F).

¹⁰ 47 C.F.R. §1.2110(c)(2).

VII. Growth and Additional Investment by DEs must be Permitted or the Commission will Stunt the Growth of Small Businesses

The Commission should apply its unjust enrichment rules for the first five years of AWS licenses as provided for in Section 1.2111 of the Commission's rules and permit new investments, and expressly find that investment in additional spectrum is permissible under the FCC's DE rules as natural growth. In the Further Notice, the Commission seeks comment on Council Tree's proposal to impose an unjust enrichment penalty if a DE takes on a "new investment" or enters into any operational agreement that would have disqualified the licensee at the time of the licensee's initial license application. The FCC's rules already provide for recapture of bidding credits during the first five years of the license term. These rules should be applied specifically to AWS and could then be triggered if a transfer of control was made during the first five years of the license term to an entity that did not have the same status of the licensee at the time of the auction.

The Commission should, however, permit evolution and expansion of a DE licensee's business through new investments and contractual agreements and not freeze them in time by disqualifying DEs from growing their businesses during the license term. Such a broad restriction could have the unintended consequence of preventing a DE from investing in new network plant and equipment, prohibiting a DE from acquiring additional spectrum or from deploying a new service that is based on an arms-length contract with a large carrier or company with significant interests in communications services.

The continued growth and expansion of small businesses is the epitome of the American Dream. Growth cannot happen if a DE must forgo new opportunities based on artificial regulatory constraints. The Commission should permit DEs to invest in additional spectrum

through a single licensee or sister subsidiary to expand their geographic license area or expand their spectrum holdings in their market. In addition, the Commission should permit DEs to enter into commercial agreements during the license term that do not implicate issues of control without imposing the unjust enrichment penalty.

VIII. The FCC's Proposal to Change to the Rules for the AWS Auction within Four Months of the Auction Start Date Will Chill Participation by Small Businesses

a. Regulatory Uncertainty Hampers Investment In Small Businesses

The FCC's proposal to change its rules for small business eligibility this close to the scheduled AWS auction has injected a level of regulatory uncertainty that is destined to chill small business participation in AWS. Regulatory certainty is essential to any bidders' participation in a spectrum auction and especially essential to small businesses that do not yet have significant revenues or cash flow to fund spectrum acquisition. The time line for raising capital is significant for start up companies and small businesses often taking months to complete. This is particularly true in the licensed wireless industry where new entrants face stiff competition. Investors and prospective lenders require entrepreneurs to present business plans with sound fundamentals, strategic advantages and limited regulatory risk.

The Further Notice makes it impossible for a small business to continue to raise money for the AWS auction due to the simple fact that the rules for qualifying are unknown. The fact that this uncertainty could last beyond the short form filing is devastating. Bidders need to raise money sufficiently in advance of the auction to enable them to submit upfront payments that establish sufficient eligibility for their bidding strategies.

Small business owners, such as Wirefree III, face a challenging task in raising funds to purchase spectrum – especially when the auction is for highly sought after spectrum such as

AWS. For Auction 58, Wirefree III spent over six months raising equity capital and securing debt commitments to fully fund its business and spectrum bids in PCS Auction No. 58. The equity Wirefree III raised financed its upfront payment. This time line was very aggressive even for an auction in which the rules were known and unwavering. Fortunately, Wirefree III is run by established entrepreneurs with a history of success in running start-up wireless businesses. In light of the Commission's decision to release the Further Notice this close to the auction and the breadth of the proposals in the Further Notice, Wirefree III currently is unable to provide prospective investors with a clear view of the opportunities in AWS.

The best way to retain the opportunities for small businesses in AWS is to defer any further changes to the DE rules for further study and apply the current rules to the AWS auction. Absent this path, which can be taken shortly after the reply comment period expires, small businesses will be forced to bear all the costs of regulatory uncertainty which could include forfeiting any opportunity to participate in the AWS auction or result in only a select few proponents of the rule changes meeting the DE eligibility requirements. This limited bidder pool would be contradict the requirements of Section 309(j) of the Communications Act.¹¹

b. A Thorough Study of the FCC's Rules for Small Business Auction Participation Cannot be Completed in 21 Days

The FCC cannot reasonably be expected to evaluate the need for changes to the DE rules in a 21 day comment period especially after rejecting calls for revisions to the rules in August,

¹¹ 47 U.S.C. §309(j). The Commission must “ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed—(i) before the issuance of bidding rules, to permit notice and comment on proposed auction procedures; and (ii) after issuance of bidding rules, to ensure that interested parties have a sufficient time to develop business plans, assess market conditions, and evaluate the availability of equipment for the relevant services.” 47 U.S.C. 309(j)(3)(E). The Commission must also promote economic opportunity and competition by disseminating licenses among a wide variety of applicants, including small businesses . . .” 47 U.S.C. 309(j)(3)(B).

2005. The FCC established the final rules for the AWS auction in August, 2005.¹² Potential participants in the AWS Auction, such as Wirefree III, reasonably relied on those rules in beginning to evaluate the opportunities in AWS. This reliance was bolstered by the FCC's decision in the Order on Reconsideration to reject Council Tree's request for proposed changes to the DE rules for AWS and commit to further study. There was no indication by the FCC in the Order on Reconsideration as to the timing of a further study or that rule changes would be made prior to the AWS auction. Based on the Order on Reconsideration, it was reasonable for potential bidders in the AWS auction to believe that any study of the rules for small business participation would be thorough, based on a developed record and analysis, and not rushed to completion prior to a single auction, such as AWS, or based largely on the proposals of a single party such as Council Tree. The Commission now seeks to change the rules with a limited comment period and after auction preparation is already underway.¹³

With over sixty spectrum auctions completed, the Commission should take the opportunity to carefully study and evaluate the different procedural rules used in the auctions and their effectiveness in creating opportunities for small businesses. While there have been many lessons learned during the multitude of auctions, the lessons can not be distilled and analyzed in a 21 day comment period. To rush the study of the appropriate auction rules for providing opportunities for small businesses merely to meet the deadline for the AWS auction is to ignore

¹² Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz band, *Order on Reconsideration*, WT Docket No. 02-353, 20 FCC Rcd 14058 (2005) ("Order on Reconsideration").

¹³ The Commission established the start date for the AWS auction and announced suggested procedures in the AWS Public Notice released prior to the *Further Notice* on January 31, 2006.

the importance of the statutory requirement that auctions provide opportunities for bidders of all sizes including small businesses.¹⁴

IX. Conclusion

Wirefree III encourages the Commission to move quickly to eliminate the cloud of regulatory uncertainty and risk that the Further Notice has injected into the AWS auction for small bidders. The Commission should carefully evaluate whether there is sufficient time to modify the DE rules in time for the AWS auction in a thoughtful and reasonable manner. Any rules adopted should be clear, specific and narrowly tailored to permit small businesses to enter into commercial transactions and relationships essential to their success in the competitive wireless marketplace and to accessing the capital markets. Spectrum leasing should be preserved as an important avenue for DEs to raise funds to acquire spectrum and deploy their own networks. The Commission should further clarify that the controlling interest rule does not require attribution of every board member but only those with the ability to control the operations of the licensee. Any restrictions on equity investments by existing carriers in DEs should be applied uniformly and implemented with clear rules for levels of ownership.

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¹⁴ The statutory grant of authority to award spectrum licenses by auction includes a requirement that the auctions rules be designed to promote dissemination of licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women. 47 USC § 309(j).